

United States Government

Department of Energy

memorandum

DATE: February 11, 2005

REPLY TO
ATTN OF: Office of Air, Water and Radiation Protection Policy and Guidance (EH-41):Koss:6-7964

SUBJECT: Clarification on Requirements for Reclaiming Used Refrigerant Transferred from the Department of Energy to the Department of Defense

TO: Distribution

The Office of Air, Water and Radiation Protection Policy and Guidance (EH-41) received field inquiries regarding a new provision of the amended refrigerant recycling rule (40 CFR Part 82, Subpart F). The provision appeared to complicate and increase the cost of class I refrigerant disposition for Federal agencies implementing Executive Order (EO) 13148, *Greening the Government Through Leadership in Environmental Management*, which mandated that agencies disposing of class I substances first offer the substances to the Department of Defense (DoD) for mission-critical needs. The concern was that §82.154(g)(5) appeared to require Department of Energy (DOE) sites to reclaim used refrigerant (*i.e.*, to reprocess the refrigerant to meet a refrigerant purity standard), before sending it to DoD. The concern was raised to EPA, noting that because DoD reclaims all transferred refrigerant going into its distribution system, requiring Federal agencies to also reclaim refrigerant before sending it to DoD would unnecessarily increase refrigerant phaseout costs, with no commensurate environmental benefit. EH-41 requested that EPA resolve this potential redundant reclamation requirement for transfers to DoD.

In the attached response, EPA indicated that DOE's transfer of refrigerant to DoD without reclaiming it is not a violation of §82.154(g)(5) because the transferred refrigerant is only initially stored by DoD, and the DOE transfer/DoD storage do not constitute "use as a refrigerant," which is prohibited by §82.154(g). When DoD makes a decision to distribute the refrigerant for "use as a refrigerant," it must reclaim the refrigerant in accordance with §82.154(g). Thus, a DOE site transferring used class I refrigerant to DoD to comply with EO 13148 requirements need not have the refrigerant reclaimed.

EH-41 revised its guidance and analysis of the amended rule (available at <<http://www.eh.doe.gov/oepa/guidance/ozone/refrigerantrecycling.pdf>>) to reflect this interpretation of §82.154(g). Questions should be directed to Ted Koss (202-586-7964) or Emile Boulos (202-586-1306).



Andrew Wallo
Director
Office of Air, Water and Radiation
Protection Policy and Guidance

Attachment

DISTRIBUTION: 01/25/05

EH-41 Memorandum, "Clarification on Requirements for Reclaiming Used Refrigerant Transferred from the Department of Energy to the Department of Defense," dated 2/11/05

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Daniel McCollum, National Energy Technical Laboratory
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Michael Taylor, Naval Petroleum Reserves in Wyoming, Utah, & Colorado, Casper, WY
Katherine Batiste, Strategic Petroleum Reserve Project Management Office
Wendy Dixon, Pittsburgh Naval Reactors Office
Earl Shollenberger, Pittsburgh Naval Reactors Office
James Robillard, Schenectady Naval Reactors Office
Erin Drobotij, Schenectady Naval Reactors Office
Herbert Nadler, Southeastern Power Administration
Darlene Low, Southwestern Power Administration
David Pearson, Western Power Administration
Jack Dodd, Western Power Administration

Daniel Glenn, Amarillo Site Office
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Melda Rafferty, Portsmouth Site Office
Scott Wade, Yucca Mountain Project Office
Jeff Baker, Golden Field Office
Susan Lacy, Sandia Site Office
Steve Goodrum, Sandia Site Office

National Nuclear Security Administration


THRU: James J. Mangeno, Senior Advisor for Environment, Safety and Health

Manager, Sandia Site Office
Manager, Kansas City Site Office
Manager, Pantex Site Office
Manager, Livermore Site Office
Manager, Nevada Site Office
Manager, Y-12 Site Office
Manager, Savannah River Site Office
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Director, NNSA Service Center, Albuquerque
Deputy Administrator for Defense Programs
Deputy Administrator for Nuclear Nonproliferation
Associate Administrator for Infrastructure and Environment
Associate Administrator for Management and Administration

cc: Other Organizations

Hazardous Waste Remedial Action Program, (HAZWRAP)
Center for Environmental Management Information



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 30 2004

OFFICE OF
AIR AND RADIATION

Andrew Wallo, Director
Office of Air, Water and Radiation Protection Policy and Guidance
Department of Energy
Washington, DC 20585

Dear Mr. Wallo:

Thank you for your correspondence, dated February 10, 2004, requesting that the Environmental Protection Agency (EPA) consider the Department of Defense's (DoD's) reclamation of transferred refrigerants from other Federal facilities as satisfying the refrigerant reclamation requirement of 40 CFR part 82, subpart F. EPA's Office of Enforcement and Compliance Assurance has forwarded your letter to my office for a response.

As stated in your correspondence, a principal driver for Federal Agencies' phaseout of class I ODS is Section 505(c), *Reductions in Ozone-Depleting Substances*, of Executive Order (EO) 13148 - "Greening the Government Through Leadership in Environmental Management" (65 FR 24595; April 22, 2000). The EO requires Federal agencies to amend their personal property management policies and procedures to preclude disposal of ozone-depleting substances (ODSs) removed from their facilities, including disposal as part of a contract, trade, or donation, without prior coordination with DoD. Where the recovered ODS is a critical requirement for DoD missions, Federal agencies are required to transfer the materials to the DoD. EPA supports the Department of Energy's (DOE's) efforts to comply with EO 13148, and finds that the prohibitions at subpart F are not at odds with its phaseout requirements.

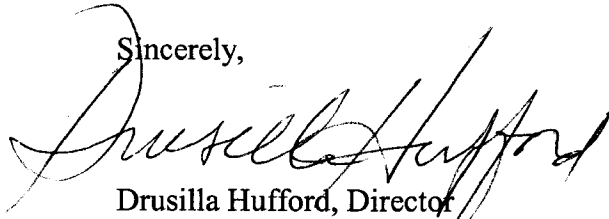
On February 29, 1996, EPA proposed an amendment removing the reclamation requirement for the transfer of used refrigerant between wholly-owned subsidiaries (61 FR 7865). The intent of the proposal was to ease the burden of reclamation in instances where transfers of used refrigerant occur between entities of like ownership. In response to DOE's comments to the proposal, EPA extended the amendment to the transfer of used refrigerant between Federal facilities of like ownership (68 FR 43794; July 24, 2003). As amended, the prohibitions at §§82.154(g)(1) and (5) grant an exemption to the reclamation requirement when Federal facilities under the control of the same Federal agency or department distribute, for use as a refrigerant, any class I or class II substance consisting wholly or in part of used refrigerant. However, the exemption does not apply to interagency sales or distribution of ODS that contain used refrigerant and are intended for use as a refrigerant.

In order to comply with EO 13148, DOE transports used ODS to the DoD-Defense Logistics Agency (DLA). EPA understands that the DLA stores government-owned used ODS from various end-uses (such as refrigerants, solvents, and fire suppression agents) at its Richmond, Virginia facility. EPA does not consider the distribution of the used ODS to DLA for storage as constituting "*use as a refrigerant*." Therefore DOE's distribution of the used ODS to DLA is not deemed as a violation of §82.154(g). If DLA makes a determination to distribute used ODS for use as a refrigerant, they must first have the used ODS reclaimed by an EPA-certified refrigerant reclaimer, in accordance with §82.154(g).

In a final rulemaking concerning the recycling of substitutes for ozone-depleting refrigerants, EPA addressed a scenario submitted by a reclaimer asking who can legally take possession of used ODS (69 FR 11964; March 12, 2004). EPA responded that while it would be a violation of the prohibition (at §82.154) for any person to sell ODS consisting of used refrigerant for use as a refrigerant to a new owner, that persons such as wholesalers, service companies, and brokers are allowed to collect used refrigerant for the purpose of sending bulk quantities to certified reclaimers. EPA stated that such a transfer of ownership is not deemed a violation of §82.154(g), since the material is not intended for use as a refrigerant. EPA has granted flexibility to appliance owners, who cannot afford the burden of storing small quantities of used refrigerant, in hopes that the Agency has removed a financial disincentive to proper recovery and reclamation of used refrigerant. EPA feels that this scenario parallels the efforts undertaken by DOE and DLA to comply with EO 13148.

Thank you once again for your correspondence. If you have any questions concerning this response, please contact Julius Banks of my staff at (202) 343-9870.

Sincerely,

A handwritten signature in black ink, appearing to read "Drusilla Hufford", written over a horizontal line.

Drusilla Hufford, Director
Stratospheric Protection Division
Office of Atmospheric Program

cc: Ted Koss/DOE
Michael Alushin/EPA-OECA
Phyllis Flaherty/EPA-OECA
Padmini Singh/EPA-OGC